



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

**SUBMISSION TO THE SENATE STANDING
COMMITTEE ON ENVIRONMENT,
COMMUNICATIONS AND THE ARTS**

**INQUIRY INTO DO NOT CALL REGISTER
LEGISLATION AMENDMENT BILL 2009**

27 January 2010

Introduction

The Department of Broadband, Communications and the Digital Economy (the Department) welcomes the opportunity to contribute to the work of the Committee.

The *Do Not Call Register Legislation Amendment Bill 2009* amends the *Do Not Call Register Act 2006* and makes consequential amendments to the *Telecommunications Act 1997*. The Bill expands the Register to enable all Australian telephone and fax numbers to be registered. The Bill will also give new registrants the choice to nominate particular industry classifications about which they wish to receive calls and faxes.

This submission is intended to supplement the information contained in the Second Reading Speech and Explanatory Memorandum to the Bill. It provides further information about consultation undertaken in relation to the Bill and issues raised by the Australian Direct Marketing Association (ADMA), some of which are drawn from a draft paper prepared by Access Economics for ADMA.

Current legislation

The Do Not Call Register was established in May 2007 under the *Do Not Call Register Act 2006* (the Act) in response to widespread community concerns about the inconvenience and intrusiveness of unsolicited telemarketing calls. The Register gives individuals the choice of opting out of unsolicited telemarketing calls, while recognising that telemarketing is a legitimate means by which businesses can market their goods and services. The Act currently applies to telephone numbers used primarily for personal or domestic purposes.

During the first month of operation over 1 million telephone numbers were registered. The Register now contains over 4 million telephone numbers¹.

In the Register's first year of operation the Australian Communications and Media Authority (ACMA), responsible for overseeing the operation of the Register, encountered significant levels of non-compliance with the legislation, with over 30 000 complaints received. However, following successful education initiatives and well-publicised enforcement action, compliance with the Register has significantly improved. In its second year of operation there was a 60 per cent drop in complaints regarding potential breaches of the Act.

Businesses wishing to make telemarketing calls to Australian telephone numbers must check or 'wash' their calling lists against the Register every 30 days to remove those numbers that have opted out of unsolicited telemarketing calls.

Consistent with the Government's cost recovery arrangements, the full direct costs of the scheme have been funded by the telemarketing industry since 1 July 2008 through subscription fees paid to wash calling lists against the Register.

¹ Registrations between 3 May 2007 and 31 December 2009, according to statistics published on the Australian Communications and Media Authority website at www.acma.gov.au/donotcall.

Under the current scheme there are eight subscription levels according to the amount of numbers checked against the Register in a year. Currently, there is no cost to wash up to 500 numbers a year against the Register. For 2009-10 subscription fees range from \$78 to wash up to 20 000 numbers a year to \$88 000 to wash 100 million numbers against the Register.

Purpose of legislative amendments

The amendments introduced in the *Do Not Call Register Legislation Amendment Bill 2009* will give all telephone and fax users, including businesses, emergency service organisations, and government agencies the choice of whether or not they wish to receive telemarketing calls and marketing faxes. Telephone and fax users that do not wish to receive telemarketing calls and marketing faxes will be able to opt-out by listing their number on the Register.

The Bill also introduces a new type of consent, to apply in addition to the existing express and inferred consent provisions in the Act. 'Registered consent' will give all new registrants the option to select the industry classifications about which they would like to receive telemarketing calls and marketing faxes, if any. Marketers will be able to access these choices when they wash a contact list against the Register and can make a telemarketing call or send a marketing fax if a call or fax relates to an activity covered by an industry classification about which a registrant has chosen to receive calls or faxes.

Unless they choose to register such a consent, the default position will continue to be that registrants are opting out of all telemarketing calls and marketing faxes covered by the scheme. Registrants will be able to change their options at any time if they later choose to opt-out of these calls and faxes, by re-registering a number.

The ability to register consent for calls and faxes about particular classifications will enable business registrants to adapt their registration to their needs by selecting the industry classifications that are most likely to be relevant to them. Registered consent will also extend the choices currently available to consumers about the telemarketing calls and marketing faxes they receive. The registered consent provision will assist marketers to target their calls and faxes more effectively to interested recipients.

These amendments balance the productivity and privacy concerns of telephone and fax users by giving them the choice to opt-out of telemarketing calls and marketing faxes, while enabling the telemarketing and fax marketing industries to continue to market their goods and services to numbers that are not on the Register, or to people who have indicated they are interested in receiving the contact.

Community consultation

Since the introduction of the Register there have been wide-ranging concerns raised by businesses and other organisations about the impact of unsolicited telemarketing calls and marketing faxes on their time and productivity. As a consequence of not being able to register a number, businesses, particularly small businesses, have stated they have experienced losses in productivity caused by responding to unsolicited

telemarketing calls and marketing faxes. The Department became aware of these concerns through complaints made directly to the Department and the Minister for Broadband, Communications and the Digital Economy during the first year of operation.

In addition, the NSW Government wrote to the former Minister for Communications, Information Technology and the Arts, Senator the Hon Helen Coonan, about the receipt of telemarketing calls by emergency service organisations. The issue of telemarketing calls to emergency service operators was also raised with the Department by the National Emergency Communications Working Group and through the Emergency Call Service Advisory Committee, chaired by the ACMA. Through the use of predictive dialling equipment telemarketers are bypassing emergency service numbers, such as '000', and contacting emergency service operators directly. These calls divert emergency resources while the telemarketing calls are being dealt with and can delay the answering of genuine emergency calls.

To investigate these concerns, on 15 August 2008 the Department released a discussion paper seeking community views on whether the Register should be expanded to allow the registration of all telephone and fax numbers. The paper also proposed alternate options, including extending the Register to small business telephone numbers, fax numbers or emergency service numbers only. The paper received 186 submissions. Of these, 138 respondents supported the extension of the Register to all Australian telephone and fax numbers, 22 respondents did not support the extension of the Register to all Australian telephone and fax numbers, 20 neither agreed nor disagreed with the extension, and six did not provide a response on the issue.

Research undertaken by the Australia Institute in December 2008 estimated the value of time lost to unsolicited telemarketing calls in Australia at \$1.58 billion per year². This amount was calculated on the basis of an average 8.5 unsolicited telemarketing calls received each month, lasting 1.45 minutes on average leading to approximately 12.3 minutes per month in answering telemarketing calls, or 147 minutes per year. The value of the time taken to answer telemarketing calls was calculated using average weekly ordinary time earnings for full-time workers.

Much of the 'cost' of a telemarketing call is transferred from the telemarketer making the call to the call's recipient, mainly in terms of lost time, productivity and the tying up of telecommunications equipment. These costs apply equally to unsolicited marketing faxes, and there are additional costs through wasted toner and paper. In this sense, fax users have argued that they are paying for the unwanted marketing faxes they receive.

Micro-businesses³ have found that answering telemarketing calls may prevent them from doing their work or answering calls from potential customers. This is a common area of concern for those businesses that are particularly reliant on the telephone for new customers, such as a locksmith or plumber. Another issue for small businesses is

² J. Fear, *Go Away, Please: the social and economic impact of intrusive marketing*, the Australia Institute, Australia, December 2008, p.6.

³ The Australian Bureau of Statistics defines 'micro businesses' as non-employing businesses or those that employ five or fewer employees.

that they may pay for the telemarketing calls they receive as a result of call-forwarding to their mobile phone or an answering service.

Following the announcement of the extension of the Register in the 2009-10 Budget, the Department has undertaken targeted consultation with key stakeholders. In addition, the Department offered to meet with those businesses and organisations that communicated their concerns about the proposed changes.

Representatives of the Department held meetings with key stakeholders in Canberra, Sydney, Melbourne, and via teleconference. These consultations included discussion of more detailed aspects of the legislation, including the development of the registered consent provision. During the consultation process the Department met with ADMA, as Australia's peak body for information-based marketing, on five occasions and maintained contact regarding the extension of the Register.

While the consultation with members of industry identified concerns that the extension of the Register may impact on business to business communications, there was support for the inclusion of registered consent which would give new registrants the option to choose the industry classifications about which they would like to receive telemarketing calls and marketing faxes. Businesses involved in the telemarketing industry noted that the registered consent provision may lead to an increase in the pool of telephone numbers available for telemarketing as it would give registrants the ability to opt-in to receive some calls and faxes.

In August 2009 the Minister initiated the formal statutory review of the Do Not Call Register. The Department subsequently released a further discussion paper on 6 October 2009, seeking community views on the identified current provisions of the Register. The paper stated that the statutory review would not consider the extension of the Register to all Australian numbers. Submissions were made by small businesses and fax users supporting the inclusion of business and fax numbers on the Register.

Separately from the consultation processes many businesses, fax users and other organisations have continued to make representations directly to the Minister, seeking eligibility to list a number on the Register.

The submissions to the discussion papers and representations made directly to the Minister indicated that businesses, particularly small businesses, would like to be able to receive the protections available under the Register. The comments received during the consultation process were taken into account in preparing the Bill.

Identified impact on business since the implementation of the Register

It is the Department's view that the Register has had few, if any, adverse consequences for the telemarketing industry. The Department notes that, in the lead up to the original Register, telemarketers argued that the Register would make telemarketing unviable and would have a severe impact on contact with existing customers and clients.

Following the introduction of the Register in 2007, two independent studies undertaken in 2008 did not identify any adverse consequences for the telemarketing

industry, indicating that the concerns raised by the industry in the lead up to the introduction of the Register were not demonstrated by subsequent experience in implementing the Register.

A study of 152 call centres in 2008 by Callcentres.net found that 90 per cent of call centres surveyed experienced no change in revenue and none experienced a fall in revenue as a result of the introduction of the Do Not Call Register⁴.

Dimension Data undertook a global benchmarking study of contact centres in 2008, which found that approximately 92 per cent of the 54 Australian contact centres surveyed had experienced no impact or change on outbound calling volumes following the introduction of the Register⁵. In addition, approximately 90 per cent claimed that there was no impact on the success rates of campaigns.

These studies indicate that the number of telemarketing calls made is not a direct correlation to the revenue raised. The Register may have the effect of improving the success rate of telemarketing campaigns by removing from the pool of numbers those telephone users that are unlikely to be receptive to telemarketing calls.

Potential impact on business

It is the Department's view that the proposed extension will give businesses the choice of registering their number to reduce the telemarketing calls they receive. Ultimately this will be a commercial decision for a business about the benefits of reducing their incoming telemarketing calls versus the possibility of missing out on learning about new products or opportunities. A business will be able to remove its number from the Register at any time if it considers that being on the Register means that it is missing out on offers about goods and services or business and investment opportunities.

Additionally, the proposed registered consent provision will give registrants the choice to identify the industry classifications about which they wish to receive calls and faxes. This will enable business registrants to select calls and faxes that are more targeted to their business interests and will be of benefit to them.

The Register may remove those people who are less likely to be receptive to telemarketing and fax marketing from the pool of potential customers. The extension may result in telemarketing and fax marketing being better targeted, leading to improvements in the efficiency and effectiveness of marketing campaigns.

There will be some compliance costs for businesses undertaking telemarketing or fax marketing. These costs are expected to be in line with the costs associated with the current form of the Register, which are estimated at an average \$3000 per year based on a lower level subscription, staff training costs and record keeping flowing from compliance with the legislation.

⁴ Callcentres.net, Contact Centre Industry Benchmarking Report 2008, www.callcentres.net.

⁵ Dimension Data, Global Contact Centre Benchmarking Report 2008, <http://www.dimensiondata.com/NR/rdonlyres/0EF63E9E-5719-426E-B7C6-DB78BAF42ABC/9487/BenchmarkingReportRevealsImpactofAustraliasDoNotCa.pdf>.

The existing subscription levels provide for a telemarketer to call up to 500 numbers a year without incurring a fee. In 2009-10 a marketer can check up to 20 000 numbers a year against the Register for only \$78. The ACMA will undertake a review of the subscription fees, in consultation with industry, to determine the fees for 2010-11.

Marketers may need to set up internal systems to ensure that they are complying with the legislation. The complexity of these systems will depend on the number of telemarketing calls made by the business. It is likely that larger businesses already have systems in place to manage their telemarketing calls, including record keeping. Small businesses are also likely to keep records of their current customers.

Access Economics preliminary report

The Department has been provided with a copy of a preliminary report by Access Economics, commissioned by ADMA, about the potential economic impact of the changes. The report raises concerns about the impact of the changes on competition and innovation, compliance costs, and efficiency costs. The report concludes, based on its preliminary findings, that an extension of the Do Not Call Register to allow all telephone and fax numbers would be detrimental to economic efficiency.

In addition, the report suggests that telemarketing calls cause only a limited intrusion for businesses and could result in a significant economic benefit by making businesses aware of new goods and services or business and investment opportunities. As such, the report argues that any benefit provided by reducing the number of telemarketing calls received would be offset by the recipient missing out on learning about new products through telemarketing.

The preliminary report does not provide data to support its findings. These are expected to be included in a final report, which has not yet been provided to the Department. The Department suggests that in the event that data is made available to support the preliminary findings of the report, the underlying assumptions on which the data has been based should be carefully considered.

Conclusion

It is the Department's view that the changes will provide businesses, emergency service organisations, government bodies, and fax users with the choice to opt-out of telemarketing calls and marketing faxes. The Department considers that the amendments proposed balance the choice of telephone and fax users in deciding whether or not to receive telemarketing calls and marketing faxes with the interests of businesses in being able to continue to market their goods and services.